

# Joint Tortfeasors and Laws in India

## Introduction

When two or more persons unite to cause damage to another person, then they will be liable as joint tortfeasors. All those who actively participate in the civil wrong commission are joint tortfeasors. Based on the percentage of damage caused by his negligent act, each joint tortfeasor is responsible for paying a portion of the compensation granted to the complainant. According to the principle of contribution, the defendant who pays more than his share of the damages, or who pay more than he is at fault, may bring an action to recover from the other defendant.

### Illustration

The claimant has the right to recover the damages from both the defendants, if X and Y are found to be at fault.

## Liability of Independent Tortfeasor

They are severally liable for the same damage due to an independent course of action. In ***Thompson v. London County Council***, it was observed that “the damage is one but the cause of action which led to the damage are two”. Such tortfeasors are, therefore, severally liable for the same damage, not jointly liable for the same tort.

In **Koursk case**, Koursk and Clan Chisholm collided with one another. As a result, the ship Clan Chisholm collided and sank another ship Itria. The owners of the damaged ship Itria recovered the damages from Clan Chisholm for the loss suffered but were not fully satisfied as the liability of the owners of Clan Chisholm was limited to the lesser amount. Subsequently, owners of Itria filed a suit against the Koursk also. It was held that Koursk and Clan Chisholm were not joint tortfeasors but only independent tortfeasors. The liability of the Independent tort was held to be several and not joint and therefore, there could be as many causes of action as the number of tortfeasors.

## Liability of Several Concurrent Tortfeasors

When the same injury is caused to another person by two or more person as a result of their separate tortious acts, this results in several concurrent tortfeasors. Even where successive injuries are caused, the parties remain multiple, concurrent tortfeasors as long as the negligence of each is both a factual and proximate cause of each injury.

### Illustration

Several concurrent tortfeasors will occur in a chain collision situation, as described in the case of [Rutter v Allen.\[1\]](#) In this case, the plaintiff stopped his vehicle behind a truck that had come to a sudden stop. The Plaintiff was then struck from behind by a vehicle driven by the defendant X which was struck by a vehicle driven by the defendant Y. The exact sequence of the collisions could not be determined with certainty because they all occurred within a very short time frame. Despite this, it was held that due to both the defendant's negligence, the damage had been caused to the plaintiff's vehicle. As a consequence, the accused were several concurrent tortfeasors and were jointly and severally liable for the damage caused by their negligence.

If a complainant suffers multiple accidents, several concurrent tortfeasors may also be the individual tortfeasors from each accident. For example, in a motor vehicle accident in *Hutchings v Dow*<sup>[2]</sup>, the complainant suffered damage. He was further injured in an assault about 18 months later. It was determined that the complainant suffered from severe and ongoing depression resulting from both the motor vehicle accident and the assault. The court stated that “several tortfeasors whose acts combined to produce the same damage, i.e. depression,” were the defendants from the motor vehicle accident and the assault perpetrator.

## Liability of Joint Tortfeasors

When two or more persons join together for common action, then all the persons are jointly and severally liable for any tort committed in the course of such action. There were three principles in English Common Law with regard to the liability of joint tortfeasors.

- The **first principle** is that the liability of wrongdoers is joint and several i.e. each is liable for the whole damage. The injured may sue them jointly or separately.
- The **second principle** was laid down in the case of *Brinsmead v Harrison*, where it was held that a judgment obtained against one joint wrongdoer released all the others even though it was not satisfied.
- The **third rule** was laid in the case of *Merryweather v Nixon*, where it was held that in common law, no action for contribution could be sustained by one wrongdoer against another, although one who sought a contribution might have been compelled to pay the full damages. The reason alleged for this rule was that any such claim to the contribution must be based on an implied contract between the tort-feasors and

that such a contract was illegally concluded with a view to committing an illegal act.

But the above rules were virtually abolished by the Law reforms Act, 1935 and the Civil Liability Act, 1978. The first rule in Brinsmead case being unjust, was abolished by the Act 1935 and therefore by the Act of 1978 which now provides that judgment recovered against any person liable in respect of any debt or damage should not be bar to an action, or to the continuance of an action, against another person who is jointly liable with him with respect to the debt and damage.

The second rule in Merryweather case is that a tortfeasor who has been held liable cannot recover contribution from other joint tortfeasors, being unjust, has also been abolished by the Act of 1935 which, as per section 6(1), provides that a tortfeasor who has been held liable to pay more than the share of the damages, can claim contribution from the other joint tortfeasors.

The third unjust rule was created by section 6(1)(b) of the Law Reform Act, of 1935 that if successive actions are brought, the amount of damages recoverable shall not, in the aggregate exceed, the amount of damages awarded in the first judgment. This rule, being unjust has now been repealed and replaced by section 4 of the civil liability Act, 1978 which now disallows the only recovery of cost in the subsequent suits, unless the court is of the opinion that there was a reasonable ground for bringing the action.

## Laws in India

In India, there is no statutory law on joint tortfeasors' liability. As stated above, in England the Law Reform Act, 1935 and the Civil Liability Act 1978, have virtually brought the position of joint- tortfeasors on par with the independent

tortfeasors. The question therefore arises, should the Indian courts follow the common law on joint tortfeasors which was laid down in *Brinsmead and Merryweather* cases and was prevailing in England prior to 1935 or the law enacted by the British Parliament in 1935 and 1978? Up to 1942, the courts in India had followed the law as laid down in **Brinsmead and Merryweather** cases, but in some cases, the courts expressed doubts about its applicability in India.

The Supreme court of India, in *Khushro S. Gandhi v. Guzdar*<sup>[4]</sup>, refused to follow the common law of England. The fact was that in the suit for damages for defamation, one of the defendants had tendered an apology to the plaintiff and the court had passed a compromise decree between the plaintiff and the defendants who tendered an apology. When the plaintiff wanted to continue the suit against the other defendants, it was contended by the defendants that the compromise decree released all other defendants from their liability. Rejecting the contentions of the defendants, the court held that in the case of joint tortfeasors, in order to release all joint tortfeasors, the plaintiff must receive full satisfaction or which the law must consider as such from a tortfeasor before other joint tortfeasors can rely on accord and satisfaction. The rule which is in consonance with justice, equity and good conscience will convince only that type of liability of tortfeasors as joint and several.

In the light of the above decision, the recent trend of the Indian court is to follow or adopt common law of England or the law enacted by the British Parliament if it is in consonance with the principles of equity, justice and good conscience under the Indian Constitution.

## When does the liability of joint tortfeasors arise?

Liability of joint tortfeasors arises in three circumstances and they are:

### **Agency**

When one person is authorized by another person to do work on his behalf then any tort committed by that person, the agent then principal who is authorizing the work will jointly and independently be held liable. When a tort is committed by an agency then both principal and agent are considered as joint tortfeasors. When any partner commits tort during the course of the business, then all other partners are also considered as joint tortfeasors.

### **Vicarious Liability**

When a person is liable for the tort committed by another person under special circumstances, the liability is joint and both are joint-tortfeasors. Thus, when a servant commits a tort in the course of employment, the master can be made liable along with the servant as a joint-tortfeasors.

### **Joint Action**

Where two or more persons join together for common action then all the persons are jointly and severally liable for the tort committed in the course of action.

## **Tortfeasors Defenses**

An individual or entity accused of committing a civil mistake basically has three options for defending their actions. These tortfeasor defenses include:

### **Consent and Waiver**

A tortfeasor (defendant) may defend his position in a civil lawsuit if the accuser (defendant) has been explicitly warned of the risk or danger of engaging in the harmful activity. This defense is referred to as the legal maxim *volenti non fit injuria*, which means “no injury is done to a consenting person.” This tortfeasor defense usually relies on signed waivers of liability

## **Comparative Negligence**

In comparative negligence, tortfeasors may try to defend themselves by claiming that the complainant contributed to his own damage by committing acts of recklessness or negligence. A similar concept called “contributory negligence” often results in the court assigning a percentage of fault to each party, which ultimately dictates the percentage of financial responsibility for which each party will be held accountable.

## **Illegality**

Where at the time of the injury, the complainant committed an illegal act for which he was seeking compensation, the defendant’s liability may be reduced, or entirely eliminated.

# **Remedies**

The law of contribution says that Y claims to share the liability to X with others was based on the fact that they were subject to a common liability to X, whether equally with Y or not. The words in respect of the same damage emphasized the need for one loss to be allocated among those liable. The amount of the contribution recoverable from any person shall be fair and equitable, taking into account the extent of his responsibility for the damage. The court may exempt any person from the liability to make a contribution or direct that any person’s contribution amounts to full compensation.

The plaintiff fell down a hole which had been left uncovered by the negligence of a contractor employed by the defendant to carry out certain works on the premises on which the plaintiff had come. It was held that the contractor who was added as a third person to the suit was liable to contribute one-half of the damages.

## Criticism of Joint Tortfeasors

Joint and multiple liability doctrine is criticized because it can result in severe inequities. For example, a defendant who has only 10 percent responsibility for an accident that is jointly and severally liable with a defendant who is 90 percent at fault for an accident may have to bear the full amount of damage financial burden, even though his or her mistake was quite minor.

## Conclusion

Joint and multiple liabilities is a system that protects the complainants when one or more wrongdoers are unable to pay damages owed to the complainant. However, this can lead to disproportionate and unexpected results for tortfeasors.